

DATE: November 20, 2024

In Re:)
 [REDACTED]) Claims Case No. 2023-CL-110602.2
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The burden of proving the existence of a valid claim against the United States is on the person asserting the claim.

DECISION

The claimant, a former spouse of a deceased member of the U.S. Air Force, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2023-CL-110602, dated June 25, 2024.

Background

On January 18, 1995, the member and the claimant divorced. The divorce decree awarded the claimant a portion of the member’s monthly disposable military retired pay and required the member to elect former spouse Survivor Benefit Plan (SBP) coverage for the claimant. On March 7, 1995, the member remarried. On April 1, 1995, the member retired from the Air Force. At that time, the member was married and had three dependent children from his prior marriage to the claimant. The member was enrolled in SBP with spouse and child coverage. The Defense Finance and Accounting Service (DFAS) was not aware of the member’s divorce from the claimant until 2008 when the claimant applied for direct payment of her portion of the member’s monthly retired pay under the Uniformed Services Former Spouses’ Protection Act (USFSPA).

On October 30, 2021, the member passed away. On March 24, 2022, DFAS received the claimant’s application for the SBP annuity as the member’s former spouse. On April 20, 2022,

DFAS denied her claim for the SBP annuity. In that letter, DFAS stated that the member did not elect SBP coverage.

The claimant appealed DFAS's denial of her claim. In her appeal, she included her divorce decree. She stated that the member agreed to provide her with the former spouse SBP annuity. DFAS reconsidered the claimant's claim in their administrative report dated August 7, 2023. DFAS reported that there was no original SBP election for the member in their record, so the member was placed in spouse and child SBP coverage at his retirement. DFAS stated that they did not receive a former spouse SBP election from the member, nor a deemed election for former spouse SBP coverage from the claimant.

In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the claim. The adjudicator found no evidence that the member established former spouse SBP coverage for the claimant at the time he retired, nor was a request for a deemed election for former spouse SBP coverage submitted to DFAS by the claimant.

In her reconsideration request, the claimant states that when she and the member agreed to the terms of their divorce, she accepted a flat rate of \$400.00 paid from the member's monthly retired pay and he agreed to name her as his SBP beneficiary at retirement. She states that the member was deployed to Korea at the time of their divorce and signed the documentation remotely. She believed that the language in the divorce decree was sufficient to award her the agreed upon benefits and was never told by the member or the divorce attorney that she had to take any action to receive the SBP annuity. She states that prior to the member's death, their daughter visited him. She attaches a statement signed by her daughter, and notarized, explaining that the member told her to help her mother get the benefits agreed upon in their divorce. The claimant states that it is plausible that the member may have submitted all the proper paperwork at his retirement while he was still stationed in Korea, but the documentation needed to award her the SBP annuity was then misfiled or lost.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2020-CL-052601.2 (January 25, 2021).

The SBP, set out in 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. Under the SBP, participating members contribute a portion of their retired pay to fund annuity payments for their designated beneficiaries. Participation in SBP is automatic for members who are married or have dependent children when they become eligible to participate in SBP. *See* 10 U.S.C. § 1448(a)(1) and (a)(2).

A member who has a former spouse upon becoming eligible to participate in the SBP may elect to provide an annuity to that former spouse. *See* 10 U.S.C. § 1448(b)(2). The requirements for making such an election are found under 10 U.S.C. § 1448(b)(5). Under that section, a member shall, at the time of making the former spouse election, provide the Secretary concerned with a written statement in the form to be prescribed by the Secretary and signed by

the member and the former spouse setting forth whether the election is being made pursuant to the requirements of a court order, or whether the election is being made pursuant to a written agreement previously entered into voluntarily by the member as part of or incident to a proceeding of divorce, dissolution, or annulment. In addition, a member may be required under the terms of a court order in the proceedings of divorce to provide SBP coverage to a former spouse. In such circumstances, the former spouse has one year from the date of the court order or filing involved to request a deemed election. *See* 10 U.S.C. § 1450(f)(3). Under 10 U.S.C. § 1450(f)(3)(A), the former spouse must provide the Secretary concerned with a written request for the deemed election and a copy of the court order, regular on its face, which requires such election or incorporates, ratifies, or approves the written agreement made by the member. In accordance with 10 U.S.C. § 1455, the Department of Defense has issued implementing regulations for the SBP law. The SBP program for members is administered by DFAS.

In this case, the member was ordered in the divorce decree to cover the claimant as his former spouse under the SBP. However, the member failed to establish former spouse SBP coverage, and the claimant did not file a deemed election for that coverage. Therefore, DFAS properly denied the claim for the SBP annuity.

Conclusion

For the reasons stated above, the claimant's request for reconsideration is denied, and we affirm the appeal decision dated June 25, 2024. In accordance with DoD Instruction 1340.21 (May 12, 2004) ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Administrative Judge
Chair, Claims Appeals Board

SIGNED: Michelle P. Tilford

Michelle P. Tilford
Administrative Judge
Member, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Claims Appeals Board